STANDARD CHARTERED BANK

v.

KENTLAND SDN. BHD. & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR
ZAKARIA YATIM J
[CIVIL SUIT NO. D2-23-2688-1987]
20 OCTOBER 1988

CIVIL PROCEDURE: *For final judgment pursuant to O. 14 or O. 18 r. 19 of the Rules of the High Court 1980 - Affidavit filed after decision of SAR - Whether can be considered.*

The plaintiffs applied for final judgment against the defendants under O. 14 or O. 18 r. 19 of the Rules of the High Court 1980. The Senior Assistant Registrar dismissed the application on 11 May 1988. The plaintiffs appealed against the decision. At the commencement of the hearing of the appeal, the plaintiffs asked the Judge to consider an affidavit filed by the plaintiff on 17 June 1988. The Judge made a ruling on the affidavit.

Held:

[1] An appeal from the Registrar to the Judge in chambers is dealt by way of an actual rehearing. The Judge hearing the appeal treats the matter as though it is coming up for the first time.

[2] It is common practice for the Judge-in-chambers, subject to costs, to admit further or additional evidence by affidavit.

[Ruling in favour of the plaintiffs.]

Cases referred to:
Krakauer v. Katz [1954] 1 All ER 244
Langdale & Anor. v. Danby [1982] 3 All ER 129

Legislation referred to:
Rules of the High Court 1980, O. 14, O. 18 r. 19

Other sources referred to:
Supreme Court Practice 1988 Vol. 1 p. 834
Mallal's Supreme Court Practice 2nd Edn., p. 680

For the plaintiff - Cecil Abraham, (S. Radhakrishnan with him) M/s. Shearn Delamore & Co.
For the second defendant - S.C. Loh; M/s. Cheang & Ariff

JUDGMENT

Zakaria Yatim J:

This is an appeal by the plaintiff against the decision of the Senior Assistant Registrar given on 11 May 1988 dismissing the two alternative prayers in the plaintiff's amended summons-in-chambers; namely to enter final judgment against the second defendant for a sum of RM2 million pursuant to O. 14; alternative to strike oyt the defence of the second defendant pursuant to O. 18 r. 19 of the Rules of the High Court 1980.

At the commencement of the hearing of the appeal before me in chambers, Mr. Cecil Abraham, Counsel for the plaintiff asked me to consider an affidavit filed by the plaintiff on 17 June 1988 that is after the Senior Assistant Registrar had made his decision. Mr. S.C. Loh, Counsel for the second defendant submitted that the said affidavit should not be considered.

In support of his submission, Mr. Loh relied on the decision of the English Court of Appeal in *Krakauer v. Katz* [1954] 1 All ER 244. In that case an interlocutory matter was heard by a Judge-in-chambers. At the hearing, Counsel for the defendant was asked whether he required an adjournment in order to answer the plaintiff's affidavit. He said he did not. On appeal, the defendant sought to adduce further evidence by affidavit. Denning LJ, as he then was, considered whether in an interlocutory matter the Court of Appeal could admit further affidavits on behalf of the defendant. He said that it was a matter of discretion in the Court of Appeal whether or not further evidence by affidavit should be admitted. Denning LJ, ruled that in the circumstances of that case, it was not proper to introduce further evidence by affidavit in the Court of Appeal.

In *Langdale & Anor. v. Danby* [1982] 3 All ER 129 the House of Lords considered whether on hearing an appeal against a summary judgment given in favour of a plaintiff the Court of the Appeal had an unfettered discretion to receive further evidence or whether it could only do so on special grounds. The House of Lords held that it would be a great injustice to the plaintiff to allow the defendant to produce for the first time on appeal evidence which had been readily available at the hearing of the application but was not produced.

It will be noted that in *Krakauer's* case and *Langdale's* case, the issue was whether fresh affidavits could be introduced in the Court of Appeal on an appeal from the decision of a Judge in chambers. The situation in the two cases does not apply in the present case.

In the instant case a Judge is hearing in chambers an appeal against the decision of the Senior Assistant Registrar. An appeal from the Registrar to the Judge-in-chambers is dealt with by way of an actual rehearing of the application which led to the order under appeal. The Judge hearing the appeal treats the matter as though it came before him for the first time. It is common practice for the Judge-in-chambers, subject of course to the question of costs, to admit further or additional evidence by affidavit to that which was before the Registrar. The *Supreme Court Practice*, 1988, Vol. 1, p. 834. See also Mallal's *Supreme Court Practice*, 2nd. Edn. p. 680.

For the reasons I have just stated, this is a proper case for the Court to consider the affidavit filed by the plaintiff on 17 June 1988.

Also found at [1989] 1 CLJ 1126